

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Frostine Newberry and Richard Newberry

(b) County of Residence of First Listed Plaintiff McLean Co, Illinois
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) (972)535-6377

Mark F. Underwood, Underwood Law Offices
2530 West White Ave., St. 200, McKinney, TX 75071

DEFENDANTS Discount Waste, Inc.

Rent-A-Fence

County of Residence of First Listed Defendant Gwinnett Co, GA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Jennifer Aufrecht (Discount Waste, Inc.)
Thompson Coe Cousins & Irons
700 N Pearl St., 25th Floor, Dallas, TX 75201

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	OTHER STATUTES
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions
				<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:
Negligence against Defendants

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

04/02/2019

SIGNATURE OF ATTORNEY OF RECORD

Mark F. Underwood

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
AT SHERMAN

FROSTINE NEWBERRY, an Individual,)	CASE NO: 4:19-cv-147
RICHARD NEWBERRY, an Individual,)	
)	JUDGE MAZZANT
Plaintiffs,)	
)	AMENDED COMPLAINT
vs.)	
)	
DISCOUNT WASTE, INC., a Corporation, and)	
ROSA LOPEZ, doing business as A & R)	
RENT-A-FENCE, a sole proprietorship)	
)	
<u>Defendants.</u>)	

Plaintiffs, Frostine Newberry and Richard Newberry, (collectively, "Plaintiffs") file this Amended Complaint against Defendants Discount Waste, Inc. and Rosa Lopez, doing business as A & R Rent-A-Fence, a sole proprietorship, and allege as follows:

I.

THE PARTIES

1. At all times material hereto, Plaintiff, Frostine Newberry was a resident of the State of Illinois. Plaintiff's current address is 24654 N. 2900 East Road, Lexington, Illinois 61753. Plaintiff's phone number is 309-365-8515 and her email address is frostinenewberry@gmail.com. The last three digits of her social security number are 218. The last three digits of her driver's license number are 946.

2. At all times material hereto, Plaintiff, Richard Newberry was a resident of the State of Illinois. Plaintiff's current address is 24654 N. 2900 East Road, Lexington, Illinois 61753. The last three digits of his social security number are 501. The last three digits of his driver's license number are 089.

3. The Defendant, Discount Waste, Inc. is a corporation, incorporated in the State of Georgia with its principal place of business located at 3595 Engineering Drive, Norcross, GA 30092. The Defendant's telephone number is 770-772-9595 and their email address is waste@discountwaste.com. The Defendant may be served with process via its registered agent, Edward J. Foye, 3595 Engineering Drive, Norcross, GA 30092.

4. The Defendant, Rosa Lopez, doing business as A & R Rent-A-Fence is a sole proprietorship with a main location in 294 Highway 175, Seagoville, TX 75159 and another location in 8008 Rosemont Road, Dallas, TX 75217. The Defendant's telephone numbers are 972-287-1124 and 214-391-1929 and her email address is rosadlanr@gmail.com and anrrrentafence@gmail.com. The State of Texas does not require sole proprietorship entities to register with the Texas Secretary of State. A search with the Texas Secretary of State did not produce any results. The Defendant may be served with process via its principal and owner, Rosa Lopez, 294 Highway 175, Seagoville, TX 75159.

II.

JURISDICTION AND VENUE

A. Diversity of Citizenship

5. Plaintiffs, Frostine Newberry and Richard Newberry were and are residents of the State of Illinois.

6. Defendant, Discount Waste, Inc. is a corporation, incorporated under the laws of the State of Georgia and has its principal place of business in the State of Georgia. Therefore, Defendant is a resident of the State of Georgia.

7. Defendant, Rosa Lopez, doing business as A & R Rent-A-Fence is a sole proprietorship with its principal place of business in the State of Texas and its main location in Highway 175, Seagoville, TX 75159.

B. Amount of controversy exceeds \$75,000.00

8. Plaintiffs seek monetary judgment relief over \$200,000.00.

C. Venue

9. The United States District Court for the Eastern District of Texas is the proper venue as this case was filed originally in the 429th Judicial District Court of Collin County, Texas. This Judicial District is located within the jurisdiction of the United States District Court for the Eastern District of Texas, Sherman Division.

III.

FACTUAL BACKGROUND

10. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 9, inclusive.

11. On or around July 14, 2017, Plaintiff, Frostine Newberry, a 68-year-old woman, was shopping at Legacy West Shopping Center. Plaintiff was walking on the sidewalk next to the Tommy Bahama store when she tripped and fell over the protruding metal bars holding up a construction barricade that was on the pedestrian sidewalk. These metal bars were temporarily placed by the Defendants.

12. Plaintiff Frostine Newberry fell to the ground causing significant bodily injury, which necessitated surgery.

13. The extended and encroached metal bars on the pedestrian sidewalk were placed without a warning sign to notify pedestrians walking nearby of the significant trip hazard created by the Defendants.

IV.

FIRST CAUSE OF ACTION

**(Negligence Against Defendants Discount Waste, Inc. and
Rosa Lopez, doing business as A & R Rent-A-Fence)**

14. The Plaintiffs incorporate herein by reference the preceding paragraphs 1 through 13, inclusive.

15. The Defendants had a duty to remove the unreasonable risk of harm created by the metal bars holding up a construction barricade on the construction premises located at 7501 Windrose Avenue, Plano, Texas 75024. *See Exhibit A.*

16. The Defendants also had a duty to mitigate the unreasonable risk of harm created by the metal bars holding up a construction barricade (depicted in Exhibit A) on the construction premises of the property located at 7501 Windrose Avenue, Plano, Texas 75024.

17. The Defendants breached these said duties by failing to remove the unreasonable risk of harm created by the metal bars and construction barricade (depicted in Exhibit A) on the construction premises of the property located at 7501 Windrose Avenue, Plano, Texas 75024.

18. The Defendants further breached these duties by failing to mitigate the Plaintiff, Frostine Newberry of the unreasonable risk of harm created by the metal bars and construction barricade (depicted in Exhibit A) on the construction premises of the property located at 7501 Windrose Avenue, Plano, Texas 75024.

19. The Defendants further breached these duties by failing to warn the Plaintiff, Frostine Newberry of the unreasonable risk of harm created by the metal bars (depicted in Exhibit A) on the construction premises of the property located at 7501 Windrose Avenue, Plano, Texas 75024.

20. The Defendants' breach of these duties was the proximate cause of the injuries sustained by Plaintiff, Frostine Newberry. But for the Defendants' breach of these duties, the accident resulting to injury to Plaintiff, Frostine Newberry would not have happened.

V.

SECOND CAUSE OF ACTION

**(Loss of Consortium Against Defendants Discount Waste, Inc. and
Rosa Lopez, doing business as A & R Rent-A-Fence)**

21. The Plaintiffs incorporate herein by reference the preceding paragraphs 1 through 20, inclusive.

22. At all times material to this lawsuit, Plaintiff, Richard Newberry was married to Plaintiff, Frostine Newberry. Before the accident, Plaintiff, Frostine Newberry was industrious, affectionate, loving, compassionate, energetic, cooperative, patient, attentive, and a good wife and provider to Plaintiff, Richard Newberry. She gave guidance, advice, counsel, protection, comfort, household services, care and attention to him. Her injuries have deprived Plaintiff, Richard Newberry of the complete society of his wife.

23. As a direct and proximate result of Defendants' acts and omissions of negligence, as described herein, and the injuries sustained by his wife; Plaintiff, Richard Newberry has suffered a loss of consortium and a loss of services in the past and, in reasonable probability, he will continue to suffer the same in the future. These includes the loss of love, affection, solace, comfort, companionship, society, assistance, emotional support and household services from his wife.

24. As a result, Plaintiff, Richard Newberry is entitled to reasonable and proper compensation for past and future loss of consortium and past and future loss of service.

VI.

CONDITIONS PRECEDENT

25. All conditions precedent to Plaintiffs' claims herein have occurred or been performed.

VII.

RELIEF

26. Plaintiffs pray that this Court will issue judgment for the damages Defendant caused them as follows:

- a. Damages for past and future physical and mental pain and suffering;
- b. Damages for past and future medical bills;
- c. Damages for past and future disfigurement;
- d. Lost wages and loss of earning capacity;
- e. Cost of this lawsuit as proved at the time of trial;
- f. Pre and post judgment interest at the maximum legal rate;

g. Such other and further relief, at law or in equity, to which the Plaintiffs may be
justly entitled.

Respectfully Submitted,

UNDERWOOD LAW OFFICES

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ATTORNEY FOR PLAINTIFFS
FROSTINE NEWBERRY AND RICHARD NEWBERRY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served, via electronic filing, in accordance with the Federal Rules of Civil Procedure, upon the following counsel on this the 2nd day of April, 2019.

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Seagoville, TX 75159
Defendant

/s/Mark F. Underwood
Mark F. Underwood